

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

MR. SPEAKER:

*Your Committee on Public Safety and Homeland Security, to which was referred House Bill 1538, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 4, after line 42, begin a new paragraph and insert:
- 2 "SECTION 5. IC 5-10-14 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2005]:
- 5 **Chapter 14. Emergency and Public Safety Employee Disability**
- 6 **from Certain Cancers or Heart or Lung Disease Presumed**
- 7 **Incurred in the Line of Duty**
- 8 **Sec. 1. As used in this chapter, "at risk for occupational**
- 9 **exposure" means that an individual incurs risk in performing the**
- 10 **basic duties of the individual's employment, including:**
- 11 **(1) providing emergency medical treatment in a nonhealth**
- 12 **care setting where there is a potential for contact with a:**
- 13 **(A) known carcinogen; or**
- 14 **(B) substance or condition that adversely affects an**
- 15 **individual's cardiovascular or respiratory system;**

(2) working at the scene of an accident, a fire, or another rescue or public safety operation, or working in an emergency rescue vehicle or a public safety vehicle, during which the individual has contact with a:

(A) known carcinogen; or

(B) substance or condition that adversely affects an individual's cardiovascular or respiratory system;

(3) engaging in the pursuit, apprehension, and arrest of law violators, during which the individual may be exposed to a:

(A) known carcinogen; or

(B) substance or condition that adversely affects an individual's cardiovascular or respiratory system; or

(4) maintaining custody and physical restraint of prisoners or inmates of a prison, a jail, or another criminal detention facility, during which the individual may be exposed to a:

(A) known carcinogen; or

(B) substance or condition that adversely affects an individual's cardiovascular or respiratory system.

Sec. 2. As used in this chapter, "employee" means an individual who:

(1) is employed full time by the state or a political subdivision of the state as:

(A) a member of a fire department (as defined in IC 36-8-1-8);

(B) an emergency medical services provider (as defined in IC 16-41-10-1); or

(C) a member of a police department (as defined in IC 36-8-1-9);

(2) in the course of the individual's employment is at risk for occupational exposure; and

(3) is not employed elsewhere by the state or a political subdivision of the state in a similar capacity.

Sec. 3. As used in this chapter, "exposure related cancer" refers to a cancer that is caused by a known carcinogen to which an individual is at risk for occupational exposure.

Sec. 4. As used in this chapter, "exposure related heart or lung disease" refers to a disease or an impairment of the cardiovascular or respiratory system caused by a substance or condition to which

1 an individual is at risk for occupational exposure.

2 Sec. 5. As used in this chapter, "known carcinogen" refers to a
3 substance or an agent the exposure to which is recognized by the:

- 4 (1) International Agency for Research on Cancer; or
5 (2) National Institute for Occupational Safety and Health;
6 as creating a high risk for the development of cancer.

7 Sec. 6. As used in this chapter, "political subdivision" has the
8 meaning set forth in IC 6-3.5-2-1.

9 Sec. 7. As used in this chapter, "substance or condition that
10 adversely affects an individual's cardiovascular or respiratory
11 system" refers to a substance or condition the exposure to which is
12 recognized by the National Institute for Occupational Safety and
13 Health as creating a high risk for the development of heart or lung
14 disease.

15 Sec. 8. (a) An employee who:

16 (1) is diagnosed with an exposure related cancer or exposure
17 related heart or lung disease that:

- 18 (A) requires medical treatment; or
19 (B) results in total or partial disability; and

20 (2) at the time of the diagnosis:

- 21 (A) is actively employed; or
22 (B) has terminated employment not more than sixty (60)
23 months earlier;

24 is presumed to have a disability incurred in the line of duty.

25 (b) The presumption described in subsection (a) may be
26 rebutted by competent evidence.

27 (c) A meeting or hearing held to rebut the presumption
28 described in subsection (a) may be held as an executive session
29 under IC 5-14-1.5-6.1(b)(1).

30 Sec. 9. This chapter does not affect the requirements for
31 determining eligibility for disability benefits provided by the state
32 or a political subdivision of the state except to the extent of
33 determining whether an employee incurred a disability in the line
34 of duty.

35 SECTION 6. IC 36-8-6-8 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) For a member
37 who became disabled before July 1, 2000, the 1925 fund shall be used
38 to pay a pension in a sum determined by the local board, but not

1 exceeding:

2 (1) for a disability or disease occurring before July 1, 1982, fifty
3 percent (50%); and

4 (2) for a disability or disease occurring after June 30, 1982,
5 fifty-five percent (55%);

6 of the salary of a first class patrolman, to a member of the police
7 department who has suffered or contracted a mental or physical disease
8 or disability that renders the patrolman unable to perform the essential
9 functions of any duty in the police department, considering reasonable
10 accommodation to the extent required by the Americans with
11 Disabilities Act. If a member who becomes eligible for a disability
12 pension has more than twenty (20) years of service, the member is
13 entitled to receive a disability pension equal to the pension the member
14 would have received if the member had retired on the date of the
15 disability.

16 (b) Except as otherwise provided in this subsection, for a member
17 who becomes disabled after June 30, 2000, the 1925 fund shall be used
18 to pay a pension in a sum determined by the local board, but not
19 exceeding fifty-five percent (55%) of the salary of a first class
20 patrolman, to a member of the police department who has suffered or
21 contracted a mental or physical disease or disability:

22 (1) that is:

23 (A) the direct result of:

24 (i) a personal injury that occurs while the fund member is on
25 duty;

26 (ii) a personal injury that occurs while the fund member is
27 off duty and is responding to an offense or a reported
28 offense, in the case of a police officer; or

29 (iii) an occupational disease (as defined in IC 22-3-7-10),
30 including a duty related disease that is also included within
31 clause (B);

32 (B) a duty related disease (for purposes of this section, a "duty
33 related disease" means a disease arising out of the fund
34 member's employment. A disease is considered to arise out of
35 the fund member's employment if it is apparent to the rational
36 mind, upon consideration of all of the circumstances, that:

37 (i) there is a connection between the conditions under which
38 the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 **or IC 5-10-14**; and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(c) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is not described in subsection (b)(1); and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(d) The member must have retired from active service after a physical examination by the police surgeon or another surgeon appointed by the local board. The disability must be determined solely by the local board after the examination and a hearing conducted under IC 36-8-8-12.7. A member shall be retained on active duty with full pay until the member is retired by the local board because of the disability.

(e) After a member has been retired upon pension, the local board

may, at any time, require the retired member to again be examined by the police surgeon or another surgeon appointed by the local board. After the examination the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the retired member should remain on the pension roll. The retired member shall be retained on the pension roll until reinstated in the service of the police department, except in case of resignation. If after the examination and hearing the retired member is found to have recovered from the member's disability and to be again fit for active duty, then the member shall be put on active duty with full pay and from that time is no longer entitled to payments from the 1925 fund. If the member fails or refuses to return to active duty, the member waives all rights to further benefits from the 1925 fund.

(f) If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below:

(1) the amount of the first full monthly pension received by that person; or

(2) fifty-five percent (55%) of the salary of a first class patrolman; whichever is greater.

(g) Time spent receiving disability benefits is considered active service for the purpose of determining retirement benefits until the member has a total of twenty (20) years of service.

(h) A fund member who is receiving disability benefits under ~~this chapter subsection (a) or (c)~~ shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

(i) A fund member who is receiving disability benefits under subsection (b) is entitled to:

(1) receive a disability benefit for the remainder of the fund member's life; and

(2) have the amount of the disability benefit computed under section 9 of this chapter when the fund member becomes fifty-five (55) years of age.

SECTION 7. IC 36-8-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

1 (b) If a member of the fire department becomes seventy (70) years
2 of age or is found upon examination by a medical officer to be
3 physically or mentally disabled and unable to perform the essential
4 functions of the job, considering reasonable accommodation to the
5 extent required by the Americans with Disabilities Act, so as to make
6 necessary the person's retirement from all service with the department,
7 the local board shall retire the person.

8 (c) The local board may retire a person for disability only after a
9 hearing conducted under IC 36-8-8-12.7.

10 (d) If after the hearing the local board determines that a person who
11 became disabled before July 1, 2000, is disabled and unable to perform
12 the essential functions of the job, considering reasonable
13 accommodation to the extent required by the Americans with
14 Disabilities Act, the local board shall then authorize the monthly
15 payment to the person from the 1937 fund of an amount equal to
16 fifty-five percent (55%) of the salary of a fully paid first class
17 firefighter in the unit at the time of the payment of the pension. All
18 physical and mental examinations of members of the fire department
19 shall be made on order of the local board by a medical officer
20 designated by the local board.

21 (e) If after the hearing under this section and a recommendation
22 under section 12.5 of this chapter, the 1977 fund advisory committee
23 determines that a person who becomes disabled after June 30, 2000:

24 (1) has a disability that is:

25 (A) the direct result of:

26 (i) a personal injury that occurs while the fund member is on
27 duty;

28 (ii) a personal injury that occurs while the fund member is
29 responding to an emergency or reported emergency for
30 which the fund member is trained; or

31 (iii) an occupational disease (as defined in IC 22-3-7-10),
32 including a duty related disease that is also included within
33 clause (B);

34 (B) a duty related disease (for purposes of this section, a "duty
35 related disease" means a disease arising out of the fund
36 member's employment. A disease is considered to arise out of
37 the fund member's employment if it is apparent to the rational
38 mind, upon consideration of all of the circumstances, that:

- 1 (i) there is a connection between the conditions under which
 2 the fund member's duties are performed and the disease;
 3 (ii) the disease can be seen to have followed as a natural
 4 incident of the fund member's duties as a result of the
 5 exposure occasioned by the nature of the fund member's
 6 duties; and
 7 (iii) the disease can be traced to the fund member's
 8 employment as the proximate cause); or
 9 (C) a disability presumed incurred in the line of duty under
 10 IC 5-10-13 **or IC 5-10-14**; and
 11 (2) is unable to perform the essential functions of the job,
 12 considering reasonable accommodation to the extent required by
 13 the Americans with Disabilities Act;
 14 the local board shall then authorize the monthly payment to the person
 15 from the 1937 fund of an amount equal to fifty-five percent (55%) of
 16 the salary of a fully paid first class firefighter in the unit at the time of
 17 the payment of the pension. All physical and mental examinations of
 18 members of the fire department shall be made on order of the local
 19 board by a medical officer designated by the local board.
 20 (f) If after the hearing under this section and a recommendation
 21 under section 12.5 of this chapter, the 1977 fund advisory committee
 22 determines that a person who becomes disabled after June 30, 2000:
 23 (1) has a disability that is not a disability described in subsection
 24 (e)(1); and
 25 (2) is unable to perform the essential functions of the job,
 26 considering reasonable accommodation to the extent required by
 27 the Americans with Disabilities Act;
 28 the local board shall then authorize the monthly payment to the person
 29 from the 1937 fund of an amount equal to fifty-five percent (55%) of
 30 the salary of a fully paid first class firefighter in the unit at the time of
 31 the payment of the pension. All physical and mental examinations of
 32 members of the fire department shall be made on order of the local
 33 board by a medical officer designated by the local board.
 34 SECTION 8. IC 36-8-7-12.1 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.1. (a) Benefits paid
 36 under this section are subject to section 2.5 of this chapter.
 37 (b) A member who has been in service twenty (20) years, upon
 38 making a written application to the fire chief, may be retired from all

1 service with the department without a medical examination or
 2 disability. Except as provided in subsection (f), the local board shall
 3 authorize the payment to the retired member of fifty percent (50%) of
 4 the salary of a fully paid first class firefighter of the unit at the time of
 5 the payment of the pension, plus:

6 (1) for a member who retires before January 1, 1986, two percent
 7 (2%) of that salary for each year of service; or

8 (2) for a member who retires after December 31, 1985, one
 9 percent (1%) of that salary for each six (6) months of service;
 10 over twenty (20) years. However, the pension in one (1) year may not
 11 exceed an amount greater than seventy-four percent (74%) of the salary
 12 of a fully paid first class firefighter.

13 (c) A member who is discharged from the fire department after
 14 having served at least twenty (20) years is entitled to receive the
 15 amount equal to the amount that the member would have received if the
 16 member retired voluntarily.

17 (d) All pensions in a class are on an equal basis. The local board
 18 may not depart from this chapter in authorizing the payment of
 19 pensions.

20 (e) The monthly pension payable to a member may not be reduced
 21 below the amount of the first full monthly pension received by that
 22 person.

23 (f) The monthly pension payable to a member who is transferred
 24 from disability to regular retirement status may not be reduced below
 25 fifty-five percent (55%) of the salary of a fully paid first class
 26 firefighter in the unit at the time of the payment of the pension.

27 (g) A benefit payable under this section shall be paid in not less than
 28 twelve (12) monthly installments.

29 (h) A fund member who is receiving disability benefits under
 30 **section 11(d) or 11(f) of this chapter** shall be transferred from
 31 disability to regular retirement status when the member becomes
 32 fifty-five (55) years of age.

33 **(i) A fund member who is receiving disability benefits under**
 34 **section 11(e) of this chapter is entitled to:**

35 **(1) receive a disability benefit for the remainder of the fund**
 36 **member's life; and**

37 **(2) have the amount of the disability benefit computed under**
 38 **section 11(e) of this chapter when the fund member becomes**

1 **fifty-five (55) years of age.**

2 SECTION 9. IC 36-8-7.5-13 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) For a member
4 who becomes disabled before July 1, 2000, the 1953 fund shall be used
5 to pay a pension in an annual sum equal to:

6 (1) fifty percent (50%) for a disease or disability occurring before
7 July 1, 1991; and

8 (2) fifty-five percent (55%) for a disease or disability occurring
9 after June 30, 1991;

10 of the salary of a first class patrolman in the police department,
11 computed and payable as prescribed by section 12(b) of this chapter, to
12 an active member of the police department who has been in active
13 service for more than one (1) year and who has suffered or contracted
14 a mental or physical disease or disability that render the member
15 permanently unfit for active duty in the police department, or to an
16 active member of the police department who has been in active service
17 for less than one (1) year who has suffered or received personal injury
18 from violent external causes while in the actual discharge of the
19 member's duties as a police officer. The pensions provided for in this
20 subsection shall be paid only so long as the member of the police
21 department remains unfit for active duty in the police department.

22 (b) For a member who becomes disabled after June 30, 2000, the
23 1953 fund shall be used to pay a pension in an annual sum equal to
24 fifty-five percent (55%) of the salary of a first class patrolman in the
25 police department, computed on an annual basis and payable in twelve
26 (12) equal monthly installments, to an active member of the police
27 department who:

28 (1) has suffered or incurred a disability that renders the member
29 permanently unfit for active duty in the police department and that
30 is:

31 (A) the direct result of:

32 (i) a personal injury that occurs while the fund member is on
33 duty;

34 (ii) a personal injury that occurs while the fund member is
35 off duty and is responding to an offense or a reported
36 offense; or

37 (iii) an occupational disease (as defined in IC 22-3-7-10),
38 including a duty related disease that is also included within

- 1 clause (B);
- 2 (B) a duty related disease (for purposes of this section, a "duty
- 3 related disease" means a disease arising out of the fund
- 4 member's employment. A disease is considered to arise out of
- 5 the fund member's employment if it is apparent to the rational
- 6 mind, upon consideration of all of the circumstances, that:
- 7 (i) there is a connection between the conditions under which
- 8 the fund member's duties are performed and the disease;
- 9 (ii) the disease can be seen to have followed as a natural
- 10 incident of the fund member's duties as a result of the
- 11 exposure occasioned by the nature of the fund member's
- 12 duties; and
- 13 (iii) the disease can be traced to the fund member's
- 14 employment as the proximate cause); or
- 15 (C) a disability presumed incurred in the line of duty under
- 16 IC 5-10-13 **or IC 5-10-14**; and
- 17 (2) is unable to perform the essential functions of the job,
- 18 considering reasonable accommodation to the extent required by
- 19 the Americans with Disabilities Act.
- 20 The pensions provided for in this subsection shall be paid only so long
- 21 as the member of the police department remains unfit for active duty in
- 22 the police department. If the salary of a first class patrolman is
- 23 increased or decreased, the pension payable shall be proportionately
- 24 increased or decreased. However, the monthly pension payable to a
- 25 member or survivor may not be reduced below the amount of the first
- 26 full monthly pension received by that person.
- 27 (c) For a member who becomes disabled after June 30, 2000, the
- 28 1953 fund shall be used to pay a pension in an annual sum equal to
- 29 fifty-five percent (55%) of the salary of a first class patrolman in the
- 30 police department, computed on an annual basis and payable in twelve
- 31 (12) equal monthly installments, to an active member of the police
- 32 department who has been in active service for at least one (1) year and:
- 33 (1) has suffered or incurred a disability that:
- 34 (A) renders the member permanently unfit for active duty in
- 35 the police department; and
- 36 (B) is not described in subsection (b)(1); and
- 37 (2) is unable to perform the essential functions of the job,
- 38 considering reasonable accommodation to the extent required by

1 the Americans with Disabilities Act.

2 The pension provided in this subsection shall be paid only so long as
 3 the member of the police department remains unfit for active duty in the
 4 police department. If the salary of a first class patrolman is increased or
 5 decreased, the pension payable shall be proportionately increased or
 6 decreased. However, the monthly pension payable to a member or
 7 survivor may not be reduced below the amount of the first full monthly
 8 pension received by that person.

9 (d) For a member who became disabled before July 1, 2000, the
 10 1953 fund shall be used to pay temporary benefits in an annual sum
 11 equal to thirty percent (30%) of the salary of a first class patrolman in
 12 the police department, computed and payable as prescribed by section
 13 12(a) of this chapter, to an active member of the police department who
 14 has been in active service for more than one (1) year and who has
 15 suffered any physical or mental disability that renders the member
 16 temporarily or permanently unable to perform ~~his~~ **the member's** duties
 17 as a member of the police department, or to an active member of the
 18 police department who has been in active service for less than one (1)
 19 year and who has suffered or received personal injury from violent
 20 external causes while in the actual discharge of the member's duties as
 21 a police officer, until the time the member is physically and mentally
 22 able to return to active service on the police department.

23 (e) For a member who becomes disabled after June 30, 2000, the
 24 1953 fund shall be used to pay a pension in an annual sum equal to
 25 thirty percent (30%) of the salary of a first class patrolman in the police
 26 department, computed on an annual basis and payable in twelve (12)
 27 equal monthly installments, to an active member of the police
 28 department who:

29 (1) suffers or incurs a disability that renders the member
 30 temporarily unfit for active duty in the police department and that
 31 is:

32 (A) the direct result of:

- 33 (i) a personal injury that occurs while the fund member is on
- 34 duty;
- 35 (ii) a personal injury that occurs while the fund member is
- 36 off duty and is responding to an offense or a reported
- 37 offense, in the case of a police officer; or
- 38 (iii) an occupational disease (as defined in IC 22-3-7-10),

1 including a duty related disease that is also included within
 2 clause (B);

3 (B) a duty related disease (for purposes of this section, a "duty
 4 related disease" means a disease arising out of the fund
 5 member's employment. A disease is considered to arise out of
 6 the fund member's employment if it is apparent to the rational
 7 mind, upon consideration of all of the circumstances, that:

8 (i) there is a connection between the conditions under which
 9 the fund member's duties are performed and the disease;

10 (ii) the disease can be seen to have followed as a natural
 11 incident of the fund member's duties as a result of the
 12 exposure occasioned by the nature of the fund member's
 13 duties; and

14 (iii) the disease can be traced to the fund member's
 15 employment as the proximate cause); or

16 (C) a disability presumed incurred in the line of duty under
 17 IC 5-10-13 or IC 5-10-14; and

18 (2) is unable to perform the essential functions of the job,
 19 considering reasonable accommodation to the extent required by
 20 the Americans with Disabilities Act.

21 The pension provided in this subsection shall be paid only so long as
 22 the member of the police department remains unfit for active duty in the
 23 police department. If the salary of a first class patrolman is increased or
 24 decreased, the pension payable shall be proportionately increased or
 25 decreased. However, the monthly pension payable to a member or
 26 survivor may not be reduced below the amount of the first full monthly
 27 pension received by that person.

28 (f) For a member who becomes disabled after June 30, 2000, the
 29 1953 fund shall be used to pay temporary benefits in an annual sum
 30 equal to thirty percent (30%) of the salary of a first class patrolman in
 31 the police department, computed on an annual basis and payable in
 32 twelve (12) equal monthly installments, to an active member of the
 33 police department:

34 (1) who has been in active service for at least one (1) year;

35 (2) suffers or incurs a disability that:

36 (A) renders the member temporarily unfit for active duty in the
 37 police department; and

38 (B) is not described in subsection (e)(1); and

1 (3) is unable to perform the essential functions of the job,
2 considering reasonable accommodation to the extent required by
3 the Americans with Disabilities Act.

4 The pension provided for in this subsection shall be paid only so long
5 as the member of the police department remains unfit for active duty in
6 the police department. If the salary of a first class patrolman is
7 increased or decreased, the pension payable shall be proportionately
8 increased or decreased. However, the monthly pension payable to a
9 member or survivor may not be reduced below the amount of the first
10 full monthly pension received by that person.

11 (g) If an application is made by an active member of the police
12 department because of physical or mental disability for temporary
13 benefits as provided in subsection (d), (e), or (f), the benefit is not
14 payable until the local board determines after a hearing conducted
15 under IC 36-8-8-12.7 that the member is unfit for active duty on the
16 police department, considering reasonable accommodation to the extent
17 required by the Americans with Disabilities Act. Before the hearing, a
18 physician to be appointed by the local board shall examine the member
19 and certify in writing whether in the physician's opinion the member is
20 unfit, physically or mentally, for active duty in the police department.
21 After the pension or benefit has been granted by the local board, the
22 payment commences with the original date of the injury or illness
23 causing the disability.

24 (h) A member who has been granted a disability benefit under this
25 section and who fails or refuses to submit to a physical examination at
26 any time by the local board physician has no right in the future to
27 receive the disability benefit, and any benefit that has been granted
28 shall be immediately canceled by the local board.

29 (i) The local board may, from time to time, require a member of the
30 police department who is receiving at any time disability benefits or
31 pensions as provided in this section to be examined by the physician
32 appointed by the local board. After the examination, the local board
33 shall conduct a hearing under IC 36-8-8-12.7 to determine whether the
34 disability still exists and whether the member should continue to
35 receive the pension or benefit. If after the examination and hearing the
36 member is found to have recovered from the member's disability and is
37 fit for active duty on the police department, then upon written notice to
38 the member by the local board, the member shall be reinstated in active

1 service, the safety board shall be informed of the action of the local
 2 board, and from that time the member is no longer entitled to payments
 3 from the 1953 fund. If the member fails or refuses to return to active
 4 duty after ordered by the local board, the member ceases to be a
 5 member of the 1953 fund and waives all rights to any further pensions
 6 or benefits provided by the 1953 fund.

7 (j) Notwithstanding any other provision of this chapter, no disability
 8 benefit may be paid for any disability based upon or caused by any
 9 mental or physical condition that a member had at the time the member
 10 entered or reentered the member's active service in the police
 11 department.

12 (k) If a member who is receiving disability benefits under subsection
 13 (a), (b), or (c) for a disease or disability occurring after June 30, 1991,
 14 is transferred from disability to regular retirement status, the member's
 15 monthly pension may not be reduced below fifty-five percent (55%) of
 16 the salary of a first class patrolman at the time of payment of the
 17 pension.

18 (l) To the extent required by the Americans with Disabilities Act, the
 19 transcripts, reports, records, and other material compiled to determine
 20 the existence of a disability shall be:

- 21 (1) kept in separate medical files for each member; and
- 22 (2) treated as confidential medical records.

23 (m) A fund member who is receiving disability benefits under ~~this~~
 24 **chapter subsection (d) or (f)** shall be transferred from disability to
 25 regular retirement status when the member becomes fifty-five (55)
 26 years of age.

27 **(n) A fund member who is receiving disability benefits under**
 28 **subsection (e) is entitled to:**

- 29 **(1) receive a disability benefit for the remainder of the fund**
- 30 **member's life; and**
- 31 **(2) have the amount of the disability benefit computed under**
- 32 **section 12 of this chapter when the fund member becomes**
- 33 **fifty-five (55) years of age.**

34 SECTION 10. IC 36-8-8-12 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) Benefits paid
 36 under this section are subject to sections 2.5 and 2.6 of this chapter.

37 (b) If an active fund member has a covered impairment, as
 38 determined under sections 12.3 through 13.1 of this chapter, the

1 member is entitled to receive the benefit prescribed by section 13.3 or
 2 13.5 of this chapter. A member who has had a covered impairment and
 3 returns to active duty with the department shall not be treated as a new
 4 applicant seeking to become a member of the 1977 fund.

5 (c) If a retired fund member who has not yet reached the member's
 6 fifty-second birthday is found by the PERF board to be permanently or
 7 temporarily unable to perform all suitable work for which the member
 8 is or may be capable of becoming qualified, the member is entitled to
 9 receive during the disability the retirement benefit payments payable at
 10 fifty-two (52) years of age. During a reasonable period in which a
 11 disabled fund member is becoming qualified for suitable work, the
 12 member may continue to receive disability benefit payments. However,
 13 benefits payable for disability under this subsection are reduced by
 14 amounts for which the fund member is eligible from:

15 (1) a plan or policy of insurance providing benefits for loss of time
 16 because of disability;

17 (2) a plan, fund, or other arrangement to which the fund member's
 18 employer has contributed or for which the fund member's
 19 employer has made payroll deductions, including a group life
 20 policy providing installment payments for disability, a group
 21 annuity contract, or a pension or retirement annuity plan other
 22 than the fund established by this chapter;

23 (3) the federal Social Security Act (42 U.S.C. 401 et seq.), the
 24 Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States
 25 Department of Veterans Affairs, or another federal, state, local, or
 26 other governmental agency;

27 (4) worker's compensation payable under IC 22-3; and

28 (5) a salary or wage, including overtime and bonus pay and extra
 29 or additional remuneration of any kind, the fund member receives
 30 or is entitled to receive from the member's employer.

31 For the purposes of this subsection, a retired fund member is considered
 32 eligible for benefits from subdivisions (1) through (5) whether or not
 33 the member has made application for the benefits.

34 (d) Notwithstanding any other law, a plan, policy of insurance, fund,
 35 or other arrangement:

36 (1) delivered, issued for delivery, amended, or renewed after April
 37 9, 1979; and

38 (2) described in subsection (c)(1) or (c)(2);

may not provide for a reduction or alteration of benefits as a result of benefits for which a fund member may be eligible from the 1977 fund under subsection (c).

(e) Time spent receiving disability benefits is considered active service for the purpose of determining retirement benefits until the fund member has a total of twenty (20) years of service.

(f) A fund member who is receiving disability benefits:

(1) under section 13.3(d) of this chapter; or

(2) based on a determination under this chapter that the fund member has a Class 3 impairment;

shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

(g) A fund member who is receiving disability benefits:

(1) under section 13.3(c) of this chapter; or

(2) based on a determination under this chapter that the fund member has a Class 1 or Class 2 impairment;

is entitled to receive a disability benefit for the remainder of the fund member's life.

SECTION 11. IC 36-8-8-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.5. (a) This section applies only to a fund member who:

(1) is hired for the first time after December 31, 1989;

(2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or

(3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

(i) an offense or a reported offense, in the case of a police officer; or

(ii) an emergency or reported emergency for which the fund

- 1 member is trained, in the case of a firefighter.
- 2 (C) An occupational disease (as defined in IC 22-3-7-10). A
- 3 covered impairment that is included within this clause and
- 4 subdivision (2) shall be considered a Class 1 impairment.
- 5 (D) A health condition caused by an exposure risk disease that
- 6 results in a presumption of disability or death incurred in the
- 7 line of duty under IC 5-10-13.
- 8 (2) Whether the fund member has a Class 2 impairment. A Class
- 9 2 impairment is a covered impairment that is:
- 10 (A) a duty related disease. A duty related disease means a
- 11 disease arising out of the fund member's employment. A
- 12 disease shall be considered to arise out of the fund member's
- 13 employment if it is apparent to the rational mind, upon
- 14 consideration of all of the circumstances, that:
- 15 ~~(A)~~ (i) there is a connection between the conditions under
- 16 which the fund member's duties are performed and the
- 17 disease;
- 18 ~~(B)~~ (ii) the disease can be seen to have followed as a natural
- 19 incident of the fund member's duties as a result of the
- 20 exposure occasioned by the nature of the fund member's
- 21 duties; and
- 22 ~~(C)~~ (iii) the disease can be traced to the fund member's
- 23 employment as the proximate cause; **or**
- 24 **(B) a health condition caused by an:**
- 25 **(i) exposure related heart or lung disease; or**
- 26 **(ii) exposure related cancer;**
- 27 **that results in a presumption of disability incurred in the**
- 28 **line of duty under IC 5-10-14.**
- 29 (3) Whether the fund member has a Class 3 impairment. A Class
- 30 3 impairment is a covered impairment that is not a Class 1
- 31 impairment or a Class 2 impairment.
- 32 SECTION 12. IC 36-8-8-13.3 IS AMENDED TO READ AS
- 33 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13.3. (a) This section
- 34 applies only to a fund member who:
- 35 (1) is hired for the first time before January 1, 1990; and
- 36 (2) does not choose coverage by sections 12.5 and 13.5 of this
- 37 chapter under section 12.4 of this chapter.
- 38 This section does not apply to a fund member described in section

1 12.3(c)(2) of this chapter.

2 (b) A fund member:

3 (1) who became disabled before July 1, 2000;

4 (2) is determined to have a covered impairment; and

5 (3) for whom it is determined that there is no suitable and
6 available work within the fund member's department, considering
7 reasonable accommodation to the extent required by the
8 Americans with Disabilities Act;

9 is entitled to receive during the disability a benefit equal to the benefit
10 that the fund member would have received if the fund member had
11 retired. If the disabled fund member does not have at least twenty (20)
12 years of service or is not at least fifty-two (52) years of age, the benefit
13 is computed and paid as if the fund member had twenty (20) years of
14 service and was fifty-two (52) years of age.

15 (c) Except as otherwise provided in this subsection, a fund member:

16 (1) who becomes disabled after July 1, 2000;

17 (2) who is determined to have a covered impairment that is:

18 (A) the direct result of:

19 (i) a personal injury that occurs while the fund member is on
20 duty;

21 (ii) a personal injury that occurs while the fund member is
22 off duty and is responding to an offense or a reported
23 offense, in the case of a police officer, or an emergency or
24 reported emergency for which the fund member is trained, in
25 the case of a firefighter; or

26 (iii) an occupational disease (as defined in IC 22-3-7-10),
27 including a duty related disease that is also included within
28 clause (B); ~~or~~

29 (B) a duty related disease (for purposes of this section, a "duty
30 related disease" means a disease arising out of the fund
31 member's employment. A disease is considered to arise out of
32 the fund member's employment if it is apparent to the rational
33 mind, upon consideration of all of the circumstances, that:

34 (i) there is a connection between the conditions under which
35 the fund member's duties are performed and the disease;

36 (ii) the disease can be seen to have followed as a natural
37 incident of the fund member's duties as a result of the
38 exposure occasioned by the nature of the fund member's

- 1 duties; and
- 2 (iii) the disease can be traced to the fund member's
- 3 employment as the proximate cause); ~~and or~~
- 4 **(C) a disability presumed incurred in the line of duty under**
- 5 **IC 5-10-13 or IC 5-10-14; and**
- 6 (3) for whom it is determined that there is no suitable and
- 7 available work within the fund member's department, considering
- 8 reasonable accommodation to the extent required by the
- 9 Americans with Disabilities Act;
- 10 is entitled to receive during the disability a benefit equal to the benefit
- 11 that the fund member would have received if the fund member had
- 12 retired. If the disabled fund member does not have at least twenty (20)
- 13 years of service or is not at least fifty-two (52) years of age, the benefit
- 14 is computed and paid as if the fund member had twenty (20) years of
- 15 service and was fifty-two (52) years of age.
- 16 (d) Except as otherwise provided in this subsection, a fund member:
- 17 (1) who becomes disabled after July 1, 2000;
- 18 (2) who is determined to have a covered impairment that is not a
- 19 covered impairment described in subsection ~~(c)(2)(A) or (c)(2)(B);~~
- 20 **(c)(2); and**
- 21 (3) for whom it is determined that there is no suitable and
- 22 available work within the fund member's department, considering
- 23 reasonable accommodation to the extent required by the federal
- 24 Americans with Disabilities Act;
- 25 is entitled to receive during the disability a benefit equal to the benefit
- 26 that the fund member would have received if the fund member had
- 27 retired. If the disabled fund member does not have at least twenty (20)
- 28 years of service or is not at least fifty-two (52) years of age, the benefit
- 29 is computed and paid as if the fund member had twenty (20) years of
- 30 service and was fifty-two (52) years of age.
- 31 (e) Notwithstanding section 12.3 of this chapter and any other
- 32 provision of this section, a member who:
- 33 (1) has had a covered impairment;
- 34 (2) recovers and returns to active service with the department; and
- 35 (3) within two (2) years after returning to active service has an
- 36 impairment that except for section 12.3 of this chapter would be
- 37 a covered impairment;
- 38 is entitled to the benefit under this subsection if the impairment

1 described in subdivision (3) results from the same condition or
2 conditions (without an intervening circumstance) that caused the
3 covered impairment described in subdivision (1). The member is
4 entitled to receive the monthly disability benefit amount paid to the
5 member at the time of the member's return to active service plus any
6 adjustments under section 15 of this chapter that would have been
7 applicable during the member's period of reemployment.".

8 Renumber all SECTIONS consecutively.
(Reference is to HB 1538 as introduced.)

and when so amended that said bill do pass.

Representative Ruppel